FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1943

No. 57

JOSEPH E. SNOWDEN,

Petitioner,

vs.

EDWARD J. HUGHES, LOUIE E. LEWIS AND ROBERT E. STRAUS, ELI M. STRAUS AND JAMES LEVY, AS CO-EXECUTORS OF THE LAST WILL AND TESTAMENT OF HENRY HORNER, DECEASED,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR A RECONSIDERATION OR REHEARING.

WILLIAM R. MING, JR.,
Washington, D. C.,

JOSEPH E. SNOWDEN,
HEBER T. DOTSON,
3451 S. Michigan Avenue,
Chicago 16, Illinois,
Counsel for Petitioner.

JOSEPH E. SNOWDEN,
HEBER T. DOTSON,
Of Counsel.

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List of Authorities.

	PAGE
Bank v. Okely, 4 Wheat. 244	8
Carter v. Com., 14 Cal. 2d 179, 182, 93 Pac 2nd 140, 142	14
Cave v. Newell, 246 U.S. 650	6, 13
DeLoach, et al. v. Crowley's, Inc., 128 F. 2d 378, 380	12
Fletcher v. Tuttle, 151 Ill. 41-53, 37 N.E. 945-946	14
Flood v. State, 100 Fla. 70, 78; 129 So. 861	14
Gillespie v. People, 188 Ill. 176, 182	14
Hitchcock v. Reynolds, 278 Ill. App. 559, 562, 563	11
Ickes v. Fox, et al., 300 U.S. 82, 96	12
In re Remmler, 136 U.S. 436, 448	5
Josma v. Western, 249 Ill. 508, 514; 94 N.E. 945, 946	14
Joyner v. Browning, 30 F. Supp. 512, 517	14
Mandley v. Backer, 121 F. 2d 875, 876	15
Seimer v. State Mut., et al., 108 F. 2d 302, 306	12, 16
Selective Draft Law Cases, 245 U.S. 366, 389	4, 5, 6
Smith v. Texas, 311 U.S. 128, 130	15
State v. Lollis, 326 Mo. 644, 649	14
Taylor v. Beckham, 178 U.S. 548, 579, 592, 602	6, 7, 13
Taylor v. Nealon, 120 S.W. 2d 586, 588	14
Tindal v. Wesley, 167 U.S. 204, 217	15
Wilson v. N. C., 169 U.S. 586, 596	13

Const. and Statutes.

Ill. Const., Art. VII, Par. 6	3, 4
U. S. Const., 14th Amend.	4, 5
Ill. Rev. Stats., 1941, Chap. 110, Sec. 166, Subsec. 2	10
Ill. Rev. Stat., 1941, Chap. 110, Sec. 169	11
28 U.S.C.A. fol. Sec. 723c, Rule 12	12

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To the Honorable Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Comes now the petitioner herein, respondent and appellant below, and presents this petition for a reconsideration or rehearing, and for the vacating of a judgment affirming in written opinion and decision the judgment of the lower Court.

Jurisdiction.

On the 17th day of January, 1944, the opinion of the Court was entered. The Honorable Chief Justice rendered the opinion of the Court which affirmed the judgment of the lower court with the following declaration in the case of *Joseph E. Snowden, Petitioner*, v. *Edward J. Hughes, Louie E. Lewis and Robert E. Straus, et al. etc.*, No. 57, October Term, 1943:

> "The judgment is accordingly affirmed for failure of the complaint to state a cause of action within the jurisdiction of the District Court."

Mr. Justice Frankfurter specially concurred with the opinion of the Chief Justice.

Mr. Justice Douglas, with whom Mr. Justice Murphy concurred, entered a dissent to the opinion of the Chief Justice; and Mr. Justice Douglas stated as follows:

> "But I depart from the majority when it denies Snowden the opportunity of showing that he was in fact the victim of such discriminatory action. His complaint seems to me to be adequate to raise the issue. He charges a conspiracy to wilfully, maliciously and arbitrarily refuse to designate him as one of the nominees of the Republican Party, that such action was an 'unequal' administration of the Illinois law and a denial to him of the equal protection of the laws, and that the conspiracy had that purpose. While the complaint could have drawn the issue more sharply, I think it defines it sufficiently to survive the motion to dismiss."

This peitition for a reconsideration or rehearing is filed within an extension of time granted by this Honorable Court beyond the twenty-five days from January 17, 1944, in accordance with Rule 33 of this Court.

Reasons for Petition for Reconsideration or Rehearing.

The original cause of action in the District Court of the United States for the Northern District of Illinois, Eastern Division was brought by the petitioner, Joseph E. Snowden, a citizen of the United States and the State of Illinois against the respondents, Edward J. Hughes, Louie E. Lewis and Robert E. Straus, *et al.*, etc. The pleadings revealed that the Respondents, Edward J. Hughes, and Louie E. Lewis, and the decedent, Henry Horner, whose co-executors are Respondents, were respectively the duly elected Secretary of State, Treasurer and Governor of the State of Illinois, and were, ex officio, members of the State Primary Canvassing Board of the State of Illinois. The complaint charged that these state officers acting under the color of the laws and by virtue of the power vested in them by the laws of the State of Illinois, had wilfully, maliciously and arbitrarily refused to designate Petitioner, Snowden, as one of the nominees of the Republican party. Petitioner alleged that the wilful, malicious and arbitrary acts of the Respondents were in violation of the Fourteenth Amendment. That the said action of the Respondents was an "unequal" administration of the laws of Illinois: that it was a denial to Petitioner of the equal protection of the laws: and that it deprived Petitioner of his property without due process of law. The Petitioner, by the allegations in his complaint, does not seek to gain or attain a seat in the General Assembly of the State of Illinois. Petitioner seeks only to recover damages from the Respondents for their illegal and unlawful acts whereby they wilfully, maliciously and arbitrarily deprived Respondent of a right that accrued to him as a citizen of the United States. The Constitution of the State of Illinois provides:

> "§6. Residence and Citizenship as qualification for Office. No person shall be elected or appointed to any office in the state, civil or military, who is not a citizen

of the United States, and who has not resided in this State one year next preceding the election or appointment." Art. VII, par. 6, Cont. of Ill. 1870.

It will be seen that it is Petitioner's citizenship of the United States that qualified him to be a candidate for office; being a resident of the State is secondary. Without that provision in the constitution, the requirement as to national citizenship as a qualification to be eligible for election or appointment to office; any person who resided in the state for a period of one year would be qualified to stand for election. We think that the real question presented here is not, whether the Petitioner was or was not lawfully entitled to receive his certificate of nomination; but the real question is, is the Fourteenth Amendment to the Constitution of the United States a virile living thing; is a citizen of the United States just such a citizen or is he in reality just a citizen of some particular state or commonwealth. Are the men in the fox holes of Guadalcanal, the muddy roads of Italy, flying the planes above our fighting forces, citizens of the United States or just citizens of the respective states from which they came. The 48 stars, symbolic of the 48 states, are set in a sea of blue indicative of the oneness of this nation. The members of the armed forces are serving because of their reciprocal obligation as a citizen of the United States and not as a citizen of the several states. *Selective Draft Law Cases*, 245 U. S. 366, 389.

Until the Fourteenth Amendment came there was no power or force in the Nation to coerce the states to grant and observe the rights of the Magna Charta to their people; the states could grant or deny them. The supreme importance of the Fourteenth Amendment thus lies in the fact that it does compel the states to concede those rights, else the national power can be invoked to coerce their concession. The Fourteenth Amendment thus brought about a wonderful change in governmental relations between states and nation, we may say in the governmental fabric

almost; it greatly increased the national power over a large field, and also decreased the sovereign or final power of the states. Chief Justice Fuller speaking for this Court in the case of *In Re Remmler*, 136 U. S. 436 at page 448, said:

> "Protection to life, liberty and property rests primarily with the States; and the Amendment furnishes an additional guaranty against any encroachment by the states upon those fundamental rights which belong to citizenship, and which the state governments were created to secure."

Before the enactment of the Fourteenth Amendment, which brought into being citizenship of the United States, the citizens of the several states were without protection against wilful, malicious and arbitrary action similar to the wilful, malicious and arbitrary acts of the Respondents. The sovereign power of a nation is alone competent to avenge wrongs committed by a sovereign. Thus the Fourteenth Amendment clothed the nation with power to avenge the wrongs committed by the sovereign states against citizens of the United States. There can be no question as to the power of our Federal Courts to hold State statutes invalid or to pass upon the invalidity of their administration or inforcement; for if the restrictions placed upon the States and upon the Nation respectively by the Constitution are to have any binding effect, and if the lines between State and Nation are to be preserved, they must be enforceable by the Court of the Nation otherwise they will not be enforced.

Chief Justice White, speaking for this Court in the *Selective Draft Law* cases, had the following to say as to the citizenship of the United States as created by the Fourteenth Amendment:

> "But to avoid all misapprehension we briefly direct attention to that amendment for the purpose of point-

ing out, as has been frequently done in the past, how completely it broadened the national scope of the government under the Constitution by causing citizenship of the United States to be paramount and dominant instead of being subordinate and derivative, and therefore, operating as it does upon all powers conferred by the Constitution." 245 U. S. 366, 389.

The right that Petitioner seeks to have this Court protect is a right conferred upon him by virtue of his citizenship of the United States; a right that is paramount and dominant and not subordinate and derivative. The Constitution of Illinois makes citizenship of the United States the first qualification for eligibility for election to office in the State of Illinois. The Respondents by their refusal to file a correct certificate with the Secretary of State showing that petitioner was one of the Republican nominees was an infringement upon a right of a citizen of the United States.

"More than forty years ago this Court determined that an unlawful denial by state action of a right to state political office is not a denial of a right of property or of liberty secured by the due process clause, (Taylor & Marshall v. Beckham, 178 U. S. 548). Only once since has this Court had occasion to consider the question and it then re-affirmed that conclusion, (Cave v. Newell, 246 U. S. 650) as we re-affirm it now."

In *Taylor & Marshall v. Beckham* the question before the Court was whether Taylor & Marshall should be granted an order of ouster against Beckham as the Governor of the State of Kentucky, the latter having been seated through an election contest which was adjudged in his favor by both Houses of the Kentucky Legislature, which action was reviewed by the Kentucky State Courts and affirmed and was brought to this Court on Writ of Error; and on considera-

tion by this Court, the Writ of Error was dismissed and the Court, in its opinion in *Taylor & Marshall* v. *Beckham,* 178 U. S. 548 at page 579 says:

> "Whether certain Statutes have or have not binding force, it is for the State to determine, and that determination in itself involves no infraction of the constitution of the United States, and raises no federal question giving the Courts of the United States jurisdiction. These observations are applicable here."

From this principle of law we are of the opinion that we are safe in assuming that the Court dismissed the Writ of Error in *Taylor & Marshall* v. *Beckham* on the ground that no federal question was involved giving the Court jurisdiction.

In *Taylor & Marshall* v. *Beckham* the dissenting opinion of Mr. Justice Brewer:

> "I agree fully with those decisions which are referred to, and which hold that as between the State and the officeholder there is no contract right either to the term of office, or the amount of salary, and that the legislature may, if not restrained by constitutional provisions, abolish the office or reduce the salary. But when the office is not disturbed, when the salary is not changed, and when, under the constitution of the State, neither can be by the legislature, and the question is simply whether one shall be deprived of that office and its salary, and both given to another, a very different question is presented, and in such a case to hold that the incumbent has no property in the office with its accompanying salary does not commend itself to my judgment."

Mr. Justice Brewer was of the opinion that the judgment of the Court of Appeals of Kentucky should have been

affirmed and that the Court should not have dismissed the Writ of Error.

In the case at bar it seems safe to say that this Court has adopted the opinion of Mr. Justice Brewer to the extent that the Order entered in the case at bar was an Order affirming the Order of the Lower Court rather than dismissing the Writ of Error. It would seem that the Court could well have adopted the other tenets to the effect that the right of a Political Office is properly within the meaning of the Federal Constitution.

In the case at bar Snowden, the Petitioner, is not seeking to question the right of himself as against an incumbent to hold a Political Office, but on the other hand is seeking to redress a wrong committed by a Political Officer in denying to him, Snowden, the right to a Political Office. In *Taylor & Marshall* v. *Beckham*, in the dissenting opinion of Mr. Justice Harlan at page 592:

> "There ought not, at this day, to be any doubt as to the objects which were intended to be attained by the requirement of due process of law. 'They were intended,' this court has said, 'to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice.'" (*Bank* v. *Okely*, 4 Wheat. 244).

When we apply the above announced principle of law to the case now being considered by this Court, we fail to see how the Court could remain deaf to the cry and complaint of the Petitioner, Snowden, against the wilful, malicious and arbitrary act of the respondents, Lewis, Hughes and Horner, plus the further fact that these acts, as set forth in the complaint of the Petitioner, are admitted in the same quality and quantity as alleged, since the only pleading filed by the Respondents was a motion to dismiss

and the effect of this motion was to admit all facts then pleaded. This being true, the Respondents admitted that the Petitioner, Snowden, had been certified by the Canvassing Board of Cook County, of the State of Illinois; and further that the Canvassing Board of the State of Illinois had published the fact that Snowden and one Jenkins had received the highest number of votes cast in the April Primary Election of 1940 and that it was their duty as such board to have correctly designated Snowden and Jenkins as the Republican Nominees for the General Assembly, but that notwithstanding these things they, the Respondents wilfully, maliciously and arbitrarily refused to place the Petitioner, Snowden's name on the Republican Ballot for the General Assembly.

They further admitted, by their pleadings, that while acting as the Board they were acting as an arm of the Sovereign State of Illinois and that their acts were the acts of the State of Illinois. Upon these grounds we respectfully urge upon this Court that in deference to the principles of law announced in *Taylor & Marshall* v. *Beckham,* this Court should and ought to grant to this Petitioner a rehearing and a reconsideration.

"And where the official act purports to be in conformity to the statutory classification, the erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws."

We fail to see how the pleading in the instant case could give rise to the pronouncement by this Court of such a rule of law. The case comes to this Court on the pleadings. This being true, this Court is without right, by the authority of the pleading to reclassify the acts of the Respondents which were termed by the Petitioner in his complaint as wilful, malicious and arbitrary; and the motion to dis-

miss admitted that these acts were wilful, malicious and arbitrary. Then at this stage of the pleading when no evidence, other than the pleading, is before the Court, how could the Court refer to the acts of the Respondents as mistaken acts when there was no evidence that the acts complained of had been innocent acts. In other words upon what basis did the Court assume, in the case at bar, that the acts of the Respondents, Hughes, the Secretary of the State of Illinois, and Horner, the Governor of the State of Illinois, and Lewis, the Treasurer of the State of Illinois, were guilty of a mistake, which mistake was the taking from the Petitioner a right to be the Republican Nominee for the General Assembly for the State of Illinois. In the pleading in the case at bar we take it that when the Court says in its opinion,

> "That the unlawful administration, by a State Officer, of a State Statute, fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination."

that it is the intention of the Court to promulgate a new principle of law. When this rule of law is applied to the facts in the case at bar it seems that whether or not the plaintiff states a good cause, action should be determined by his pleading, and in order to determine this we must resort to the Illinois Civil Practice Act, Ill. Rev. Stat. 1941, Chap. 110, Sec. 166, Sub-sec. 2:

> "No pleading shall be deemed bad in substance which shall contain such information as shall reasonably inform the opposite party of the nature of the claim or defense which it is called upon to meet."

In the case at bar the Respondents made no objection that they were not reasonably informed as to the character

of the complaint nor does it seem that such objection could have been made.

We again refer to the Illinois Civil Practice Act; Section 45, Ill. Rev. Stat., 1941, ch. 110, #169, provides that "(1) All objections to pleadings heretofore raised by demurrer shall be raised by motion. Such motion shall point out specifically the defects complained of, and shall ask for such relief as the nature of the defects may make appropriate * * * where a pleading is substantially insufficient in law, or that a pleading be made more definite and certain in a specified particular. * * *" In the case of *Hitchcock* v. *Reynolds*, 278 Ill. App. 559 at page 562, the Court says:

> "A motion which fails to allege facts pointing out specifically the defects complained of and to ask for such relief as the nature of the defects may make appropriate, is insufficient in law and will not be entertained by the court."

Nowhere in the motions to strike filed by the Respondents do the Respondents set forth any facts which point out specifically "The lack of any allegations in the complaint here, tending to shew a purposeful discrimination between persons or classes of persons is not supplied by the opprobious epithets 'willful' and 'malicious' applied to the Board's failure to certify petitioner as a successful candidate, or by characterizing that failure as an unequal, unjust and oppressive administration of the laws of Illinois."

The Court states further, page 563:

> "The purpose of the Act, in requiring the motion to specifically point out the nature of the defects, is to inform the party against whom the motion is directed what the contention of the party is, so that he may make preparation to meet such contention."

Nowhere in the motions or pleading filed by the Respondents have the said Respondents alleged, set forth or stated facts which would be a basis for the Court's pronouncement. In *Ickes* v. *Fox, et al.*, 300 U. S. 82 at page 96, this Court said:

> "The motion to dismiss concedes the truth of the allegations, but even if they were denied, we should still be obliged to indulge the presumption, in favor of the jurisdiction of the trial court, that respondents might be able to prove them."

It appears that the reasoning of this Court in the case just cited is in line with the present judicial trend; that is, Courts do not now construe pleadings against the pleader but pleadings are now to be construed so as to do substantial justice. In a recent case decided in the Circuit Court of Appeals, Fifth Circuit, Justice Sibley said:

> "Under the Rules of Civil Procedure a case consists not in the pleadings, but the evidence, for which the pladings furnish the basis. Cases are generally to be tried on the proofs rather than the pleadings. Demurrers are abolished. • • • But the principle is no longer of force that pleadings will be construed strictly against the pleader. Rule 8 (f) says that 'all pleadings shall be so construed as to do substantial justic.'" *DeLoach, et al.* v. *Crowley's Inc.*, 128 F. 2nd 378, 380.

Justice Sanborn, speaking with reference to Rule 12 (b) (6) 28 U. S. C. A. following Sec. 723c, in *Leimer* v. *State Mutual, et al.*, said:

> "Under the present practice, we think, the making of a motion to dismiss a complaint for failure to state a claim upon which relief can be granted has the effect of admitting the existence and validity of the claim as stated." 108 F. 2nd, 302, 306.

Mr. Justice Douglas, in his opinion in this case, states that he believes that the complaint is sufficient to raise the issue. That "all pleadings shall be construed as to do substantial justice."

When this Court made the pronouncement that more than forty years ago it had determined that an unlawful denial by state action of a right to state political office is not a denial of a right of property or liberty secured by the due process clause; and that only once since then had it had occasion to consider the question: we are mindful of the fact that the cases so considered were not in any way similar to the facts in the case before the court. In the cases of *Taylor & Marshall* v. *Beckham*, 178 U. S. 548, *Cave* v. *Newell*, 246 U. S. 650; and also *Wilson* v. *North Carolina*, 169 U. S. 586, 696. In those cases the question before the court was the question of investing the parties with the mantle of office. No such question arises in the case before this Court. No where have we been able to find, since *Taylor & Marshall* v. *Beckham* and *Cave* v. *Newell*, a case or cases analogous to the case before the Court. Petitioner does not seek to be installed into office; his action is an action for damages against the Respondents who, by virtue of public position under a State Government and in the name and for the State acted contrary to an express command of the state law. Since *Taylor & Marshall* v. *Beckham* there has been a more liberal trend in the interpretation given by courts to the word "property" as associated with public office. In *Taylor* v. *Beckham*, 178 U. S. 548, 602, Justice Harlan enunciated the new concept of "property" which has been adopted by many jurisdictions. While this Court has not been called upon to consider the question of "property" in connection with public office since that time, many state jurisdictions have had the question presented. "Property" is now said to be the right that a person has in relation to something; it is interpreted as inclusive of whatever right a person

can have, possess and enjoy in relation to something; he who has that right to the exclusion of others, is said to have the property. That an office is the subject of property, as every other thing corporeal or incorporeal, from which man can earn a livelihood and make gain. *Joyner* v. *Browning*, 30 F. Supp. 512, 517; *State* v. *Lollis*, 326 Mo. 644, 649; *Taylor* v. *Nealon*, 120 S. W. 2d, 586, 588; *Carter* v. *Commission*, 14 Cal. 2d, 179, 182, 93 Pac. 2d, 140, 142; *Flood* v. *State*, 100 Fla. 70, 78, 129 So. 861. The Supreme Court of Illinois has also adopted the broad view of the concept of the rights guarded and protected by the due process clause of the Constitution and says "These terms, 'life', 'liberty' and 'property', embrace every personal, political and civil right which any person within the state may possess," *Josma* v. *Western*, 249 Ill. 508, 514; 94 N. E. 945, 946. In *Fletcher* v. *Tuttle*, 151 Ill. 41-53, 37 N. E. 683-686, the Supreme Court of Illinois said:

> "Every citizen has the right of voting for public office and being elected. These are the political rights which the humblest citizen possesses."

And in *Gillespie* v. *People*, 188 Ill. 176, 182 the Court again announced the same principle of law in the following language:

> "The terms 'life', 'liberty' and 'property' are representative terms, and intended to cover every right, to which a member of the body politic is entitled under the law. . . . Indeed they may embrace all our liberties, personal, civil, and political."

The right which Petitioner claims the Respondents violated is the right which every duly qualified citizen has under our representative form of government; that is, the right of equality of opportunity to be chosen a representative of the people in the conduct of the affairs of government. Such right is a fundamental civil right. *Fletcher* v. *Tuttle*, 151 Ill. 41-53; 37 N. E. 683-686. Unless its existence

is recognized and protected a republican form of government is impossible. That if it is left to the whims and caprices of state officers to summarily deny to a citizen of the United States a right that accrues to him as such citizen of the United States, it would be to contravene every conception of national unity. It would also introduce a caste system utterly incompatible with the spirit of our system of government. It would permit those who are in power to stigmatize those whom they viewed with disfavor; it would tend to discourage the ambitions of those who desire to serve their fellow citizens. It might thus withhold from a large segment of our people that mobility which is basic to any guarantee of freedom of opportunity. The result would be a substantial dilution of the rights of national citizenship, a serious impairment of the principles of equality. If no such right exists, then government by the will of the governed cannot function, cloaking their actions under color of state authority, state officers could chose to ignore the will of the electorate. Counsel for the Respondents, on argument before this Court, endeavored to argue the immunity of the respondents to coercion. However, Mr. Justice Harlan, speaking for this Court in *Tindal* v. *Wesley*, 167 U. S. 204, 217 said:

> "No man in this country is so high that he is above the law. All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it."

In the case before the Court the respondents, by their motion to dismiss conceded that the complaint stated the truth, *Mandley* v. *Backer*, 121 F. 2d, 875, 876, they attempt by their motion to dismiss, which admits the validity and correctness of the allegations in petitioner's complaint, to gain immunity for their defiance of the law.

We believe that the words of Mr. Justice Black in the case of *Smith* v. *Texas*, 311 U. S. 128, 130 are applicable

to the case before this court; in that case Mr. Justice Black said, page 130:

> "The fact that the written words of a State's laws hold out a promise that no such discrimination will be practiced is not enough. The Fourteenth Amendment requires that equal protection to all must be given—not promised."

In that case, as in the case before the Court, the statutory scheme is not in itself unfair, it was capable of being carried out with no discrimination whatsoever as in this case, but by reason of the exercise of discretion, it was equally capable of being applied in such a manner as to proscribe any person or group thought by the law's administrators to be undesirable. So in the case before the Court the directions of the statutes of the state of Illinois were not enough, the mere promise did not give to petitioner the protection required by the Fourteenth Amendment.

CONCLUSION.

In conclusion we are of the opinion that if the interpretation placed upon the pleadings in the complaint prevails it will be almost impossible to draft a complaint which would be good in law. We submit that when a complaint sufficiently informs the opposing party of the nature of the claim that is made against him, that there is no justification for dismissing the complaint for insufficiency of statement, except where it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of the claim. *Leimer* v. *State Mutual, et al.*, 108 F. 2d, 3032-306. In making a decision in this matter Petitioner desires that

the Court clarify the effect of the decision of the Court as to whether or not the petitioner would be permitted to file an amended complaint in the event the Court does not see fit to act favorably upon this petition for reconsideration or rehearing.

For the foregoing reasons the petitioner respectfully urges that a rehearing be granted and that upon further consideration that the order of January 17, 1944, affirming the judgment of the lower court in the above entitled cause be revoked.

Respectfully submitted,

WILLIAM R. MING, JR.,
JOSEPH E. SNOWDEN,
HEBER T. DOTSON,
Counsel for Petitioner.

JOSEPH E. SNOWDEN,
HEBER T. DOTSON,
Attorneys at Law,
3451 South Michigan Avenue,
Chicago 16, Illinois.

I, Joseph E. Snowden, petitioner, and of counsel for petitioner, do hereby certify that the foregoing petition for reconsideration and rehearing and for vacating the order affirming the judgment of the lower court is presented in good faith and not for the purpose of delay.

JOSEPH E. SNOWDEN,
Petitioner and of Counsel for Petitioner.

pp. 12-8-9

SUPREME COURT OF THE UNITED STATES.

No. 57.—October Term, 1943.

Joseph E. Snowden, Petitioner, *vs.* Edward J. Hughes, Louie E. Lewis and Robert E. Straus, et al., etc.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[January 17, 1944.]

Mr. Chief Justice Stone delivered the opinion of the Court.

Petitioner, a citizen of Illinois, brought this suit at law in the District Court for Northern Illinois against respondents, citizens of Illinois, to recover damages for infringement of his civil rights in violation of the Fourteenth Amendment and 8 U. S. C. §§ 41, 43, and 47(3). He alleged that the suit was within the jurisdiction of the court as a suit arising under the Constitution and laws of the United States, 28 U. S. C. § 41(1), a suit for the recovery of damages for injury to property and for deprivation of a right or privilege of a citizen of the United States, 28 U. S. C. § 41(12), and a suit for the recovery of damages for deprivation, under color of state law, custom, regulation or usage, of a right or privilege secured by the Fourteenth Amendment, 28 U. S. C. § 41(14).

The complaint makes the following allegations. Petitioner was one of several candidates at the April 9, 1940, Republican primary election held in the Third Senatorial District of Illinois pursuant to Ill. Rev. Stat. (State Bar Ass'n Ed.), Ch. 46, Art. 8 for nominees for the office of representative in the Illinois General Assembly. By reason of appropriate action taken respectively by the Republican and Democratic Senatorial Committees of the Third Senatorial District in conformity to the scheme of proportional representation authorized by Ill. Rev. Stat., Ch. 46, § 8-13, two candidates for representative in the General Assembly were to be nominated on the Republican ticket and one on the Democratic ticket. Since three representatives were to be elected, Ill. Const., Art. IV, §§ 7 and 8, and only three were to be nominated by the primary election, election at the primary as one of the two Re-

publican nominees was, so the complaint alleges, tantamount to election to the office of representative.

The votes cast at the primary election were duly canvassed by the Canvassing Board of Cook County, which, as required by Ill. Rev. Stat., Ch. 46, § 8-15, certified and forwarded to the Secretary of State a tabulation showing the results of the primary election in the Third Senatorial District. By this tabulation the Board certified that petitioner and another had received respectively the second highest and highest number of votes for the Republican nominations. Ill. Rev. Stat., Ch. 46, § 8-13 requires that the candidates receiving the highest votes shall be declared nominated.

Respondents Hughes and Lewis, and Henry Horner whose executors were joined as defendants and are respondents here, constituted the State Primary Canvassing Board for the election year 1940. By Ill. Rev. Stat., Ch. 46, § 8-15 it was made their duty to receive the certified tabulated statements of votes cast, including that prepared by the Canvassing Board of Cook County, to canvass the returns, to proclaim the results and to issue certificates of nomination to the successful candidates. Such a certificate is a prerequisite to the inclusion of a candidate's name on the ballot. Ill. Rev. Stat., Ch. 46, § 10-14. Acting in their official capacity as State Primary Canvassing Board they issued, on April 29, 1940, their official proclamation which designated only one nominee for the office of representative in the General Assembly from the Third Senatorial District on the Republican ticket and excluded from the nomination petitioner, who had received the second highest number of votes for the Republican nomination.

After setting out these facts the complaint alleges that Horner and respondents Hughes and Lewis, "willfully, maliciously and arbitrarily" failed and refused to file with the Secretary of State a correct certificate showing that petitioner was one of the Republican nominees, that they conspired and confederated together for that purpose, and that their action constituted "an unequal, unjust and oppressive administration" of the laws of Illinois. It alleges that Horner, Hughes and Lewis, acting as state officials under color of the laws of Illinois, thereby deprived petitioner of the Republican nomination for representative in the General Assembly and of election to that office, to his damage in the amount of $50,000, and by so doing deprived petitioner, in contravention of 8 U. S. C. §§ 41, 43 and 47(3), of rights, privileges

and immunities secured to him as a citizen of the United States, and of the equal protection of the laws, both guaranteed to him by the Fourteenth Amendment.

The District Court granted motions by respondents to strike the complaint and dismiss the suit upon the grounds, among others, that the facts alleged did not show that the plaintiff had been deprived of any right, privilege or immunity secured to him by the Constitution or laws of the United States, and that, the alleged cause of action being predicated solely upon a claim that state officers had failed to perform duties imposed upon them by state law, their failure was not state action to which the prohibitions of the Fourteenth Amendment are alone directed, and hence was not sufficient to establish an infringement of rights secured to petitioner by the Fourteenth Amendment. The Court of Appeals for the Seventh Circuit affirmed, 132 F. 2d 476, holding on authority of *Barney* v. *City of New York*, 193 U. S. 430, that the action of the members of the State Board, being contrary to state law, was not state action and was therefore not within the prohibitions of the Fourteenth Amendment.

In substance petitioner's alleged cause of action is that the members of the State Primary Canvassing Board, acting as such but in violation of state law, have by their false certificate or proclamation and by their refusal to file a true certificate deprived petitioner of nomination and election as representative in the state assembly. To establish a cause of action arising under the Constitution and laws of the United States within the jurisdiction of the District Court as prescribed by 28 U. S. C. § 41(1), (12) and (14), he relies particularly on the provisions of the Fourteenth Amendment supplemented by two sections of the Civil Rights Act of 1871, 8 U. S. C. §§ 43, 47(3).[1]

Section 43 provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable

[1] 8 U. S. C. § 41, on which petitioner also relies, guaranties to all persons within the United States "the same right . . . to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens". As pointed out later in this opinion, no claim of discrimination based on race is made.

to the party injured in an action at law . . . for redress." Section 47(3), so far as now relevant, gives an action for damages to any person "injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States", by reason of a conspiracy of two or more persons entered into "for the purpose of depriving . . . any person . . . of the equal protection of the laws, or of equal privileges and immunities under the laws". It is the contention of petitioner that the right conferred on him by state law to become a candidate for and to be elected to the office of representative upon receipt of the requisite number of votes in the primary and general elections, is a right secured to him by the Fourteenth Amendment, and that the action of the State Primary Canvassing Board deprived him of that right and of the equal protection of the laws for which deprivation the Civil Rights Act authorizes his suit for damages.

Three distinct provisions of the Fourteenth Amendment guarantee rights of persons and property. It declares that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

The protection extended to citizens of the United States by the privileges and immunities clause includes those rights and privileges which, under the laws and Constitution of the United States, are incident to citizenship of the United States, but does not include rights pertaining to state citizenship and derived solely from the relationship of the citizen and his state established by state law. *Slaughter-House Cases*, 16 Wall. 36, 74, 79; *Maxwell* v. *Bugbee*, 250 U. S. 525, 538; *Prudential Insurance Co.* v. *Cheek*, 259 U. S. 530, 539; *Madden* v. *Kentucky*, 309 U. S. 83, 90-93. The right to become a candidate for state office, like the right to vote for the election of state officers, *Minor* v. *Happersett*, 21 Wall. 162, 170-78; *Pope* v. *Williams*, 193 U. S. 621, 632; *Breedlove* v. *Suttles*, 302 U. S. 277, 283, is a right or privilege of state citizenship, not of national citizenship which alone is protected by the privileges and immunities clause.

More than forty years ago this Court determined that an unlawful denial by state action of a right to state political office is not a denial of a right of property or of liberty secured by the due

process clause. *Taylor & Marshall* v. *Beckham*, 178 U. S. 548. Only once since has this Court had occasion to consider the question and it then reaffirmed that conclusion, *Cave* v. *Newell*, 246 U. S. 650, as we reaffirm it now.

Nor can we conclude that the action of the State Primary Canvassing Board, even though it be regarded as state action within the prohibitions of the Fourteenth Amendment, was a denial of the equal protection of the laws. The denial alleged is of the right of petitioner to be a candidate for and to be elected to public office upon receiving a sufficient number of votes. The right is one secured to him by state statute and the deprivation of right is alleged to result solely from the Board's failure to obey state law. There is no contention that the statutes of the state are in any respect inconsistent with the guarantees of the Fourteenth Amendment. There is no allegation of any facts tending to show that in refusing to certify petitioner as a nominee, the Board was making any intentional or purposeful discrimination between persons or classes. On the argument before us petitioner disclaimed any contention that class or racial discrimination is involved. The insistence is rather that the Board, merely by failing to certify petitioner as a duly elected nominee, has denied to him a right conferred by state law and has thereby denied to him the equal protection of the laws secured by the Fourteenth Amendment.

But not every denial of a right conferred by state law involves a denial of the equal protection of the laws, even though the denial of the right to one person may operate to confer it on another. Where, as here, a statute requires official action discriminating between a successful and an unsuccessful candidate, the required action is not a denial of equal protection since the distinction between the successful and the unsuccessful candidate is based on a permissible classification. And where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws.

The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the

action taken with respect to a particular class or person, cf. *McFarland* v. *American Sugar Co.*, 241 U. S. 79, 86-7, or it may only be shown by extrinsic evidence showing a discriminatory design to favor one individual or class over another not to be inferred from the action itself, *Yick Wo* v. *Hopkins*, 118 U. S. 356, 373-4. But a discriminatory purpose is not presumed, *Tarrance* v. *Florida*, 188 U. S. 519, 520; there must be a showing of "clear and intional discrimination", *Gundling* v. *Chicago*, 177 U. S. 183, 186; see *Ah Sin* v. *Wittman*, 198 U. S. 500, 507-8; *Bailey* v. *Alabama*, 219 U. S. 219, 231. Thus the denial of equal protection by the exclusion of negroes from a jury may be shown by extrinsic evidence of a purposeful discriminatory administration of a statute fair on its face. *Neal* v. *Delaware*, 103 U. S. 370, 394, 397; *Norris* v. *Alabama*, 294 U. S. 587, 589; *Pierre* v. *Louisiana*, 306 U. S. 354, 357; *Smith* v. *Texas*, 311 U. S. 128, 130-31; *Hill* v. *Texas*, 316 U. S. 400, 404. But a mere showing that negroes were not included in a particular jury is not enough; there must be a showing of actual discrimination because of race. *Virginia* v. *Rives*, 100 U. S. 313, 322-3; *Martin* v. *Texas*, 200 U. S. 316, 320-21; *Thomas* v. *Texas*, 212 U. S. 278, 282; cf. *Williams* v. *Mississippi*, 170 U. S. 213, 225.

Another familiar example is the failure of state taxing officials to assess property for taxation on a uniform standard of valuation as required by the assessment laws. It is not enough to establish a denial of equal protection that some are assessed at a higher valuation than others. The difference must be due to a purposeful discrimination, which may be evidenced, for example, by a systematic under-valuation of the property of some taxpayers and a systematic over-valuation of the property of others, so that the practical effect of the official breach of law is the same as though the discrimination were incorporated in and proclaimed by the statute. *Coulter* v. *Louisville & N. R. Co.*, 196 U. S. 599, 607, 609-10; *Chicago B. & Q. Ry.* v. *Babcock*, 204 U. S. 585, 597; *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 353; *Southern Ry. Co.* v. *Watts*, 260 U. S. 519, 526.[2] Such discrimination may also be shown to be purposeful, and hence a denial of equal protection, even though it is neither systematic nor long-continued. Cf. *McFarland* v. *American Sugar Co., supra.*

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[2] See also Raymond v. Chicago Union Traction Co., 207 U. S. 20, 36; Sioux City Bridge Co. v. Dakota Co., 260 U. S. 441, 447; Bohler v. Calloway, 267 U. S. 479, 489; Cumberland Coal Co. v. Board of Revision, 284 U. S. 23, 25, 28; cf. Great Northern Ry. v. Weeks, 297 U. S. 135, 139.

The lack of any allegations in the complaint here, tending to show a purposeful discrimination between persons or classes of persons is not supplied by the opprobrious epithets "willful" and "malicious" applied to the Board's failure to certify petitioner as a successful candidate, or by characterizing that failure as an unequal, unjust, and oppressive administration of the laws of Illinois. These epithets disclose nothing as to the purpose or consequence of the failure to certify, other than that petitioner has been deprived of the nomination and election, and therefore add nothing to the bare fact of an intentional deprivation of petitioner's right to be certified to a nomination to which no other has been certified. Cf. *United States* v. *Illinois Central Co.*, 303 U. S. 239, 243. So far as appears the Board's failure to certify petitioner was unaffected by and unrelated to the certification of any other nominee. Such allegations are insufficient under our decisions to raise any issue of equal protection of the laws or to call upon a federal court to try questions of state law in order to discover a purposeful discrimination in the administration of the laws of Illinois which is not alleged. Indeed on the allegations of the complaint, the one Republican nominee certified by the Board was entitled to be certified as the nominee receiving the highest number of votes, and the Board's failure to certify petitioner, so far as appears, was unaffected by and unrelated to the certification of the other, successful nominee. While the failure to certify petitioner for one nomination and the certification of another for a different nomination may have involved a violation of state law, we fail to see in this a denial of the equal protection of the laws more than if the Illinois statutes themselves had provided that one candidate should be certified and no other.

If the action of the Board is official action it is subject to constitutional infirmity to the same but no greater extent than if the action were taken by the state legislature. Its illegality under the state statute can neither add to nor subtract from its constitutional validity. Mere violation of a state statute does not infringe the federal Constitution. Compare *Water Works Co.* v. *Owensboro*, 200 U. S. 38, 47. And state action, even though illegal under state law, can be no more and no less constitutional under the Fourteenth Amendment than if it were sanctioned by the state legislature. *Nashville, C. & St. L. Ry.* v. *Browning*, 310 U. S. 362, 369-70. See also *Coulter* v. *Louisville & N. R. R. Co.*, *supra*,

608-9; *Hayman* v. *Galveston*, 273 U. S. 414, 416; *Iowa-Des Moines Bank* v. *Bennett*, 284 U. S. 239, 244. A state statute which provided that one nominee rather than two should be certified in a particular election district would not be unconstitutional on its face and would be open to attack only if it were shown, as it is not here, that the exclusion of one and the election of another were invidious and purposely discriminatory. Compare *Missouri* v. *Lewis*, 101 U. S. 22, 30, 32; *Yick Wo* v. *Hopkins*, *supra*.

Where discrimination is sufficiently shown, the right to relief under the equal protection clause is not diminished by the fact that the discrimination relates to political rights. *McPherson* v. *Blacker*, 146 U. S. 1, 23-4; *Nixon* v. *Herndon*, 273 U. S. 536, 538; *Nixon* v. *Condon*, 286 U. S. 73; see *Pope* v. *Williams*, *supra*, 634. But the necessity of a showing of purposeful discrimination is no less in a case involving political rights than in any other. It was not intended by the Fourteenth Amendment and the Civil Rights Acts that all matters formerly within the exclusive cognizance of the states should become matters of national concern.

A construction of the equal protection clause which would find a violation of federal right in every departure by state officers from state law is not to be favored. And it is not without significance that we are not cited to and have been unable to find a single instance in which this Court has entertained the notion that an unlawful denial by state authority of the right to state office is without more a denial of any right secured by the Fourteenth Amendment. See *Taylor & Marshall* v. *Beckham*, *supra*, and authorities cited; *Cave* v. *Newell*, *supra*. Only once has it been contended here that an unlawful denial by state executive, administrative or legislative authority of the right to state office is for that reason alone a denial of equal protection. *Wilson* v. *North Carolina*, 169 U. S. 586.[3] In rejecting that contention this Court said at pages 594-5:

[3] In United States v. Classic, 313 U. S. 299, this Court refused to pass on a similar contention as to a refusal to count ballots cast in an election for federal officers. The holding in that case that a refusal to count votes cast, and the consequent false certification of candidates, was a denial of a right or privilege "secured . . . by the Constitution . . . of the United States" was rested on the ground that the right to vote for a federal officer, whether or not it be deemed a privilege of citizens of the United States, see Twining v. New Jersey, 211 U. S. 78, 97, is a right secured by Art. 1, §§ 2 and 4 of the Constitution. See 313 U. S. at 314-5 and cases cited; United States v. Mosley, 238 U. S. 383. The Court pointed out that "the indictment ~~does not~~ on its face purport to charge a ~~denial~~ of equal protection to voters or candidates," 313 U. S. at 329, and declined to consider whether the facts alleged could constitute such a denial.

does not

deprivation

"In its internal administration the State (so far as concerns the Federal Government) has entire freedom of choice as to the creation of an office for purely state purposes, and of the terms upon which it shall be held by the person filling the office. . . .

Upon the case made by the plaintiff in error, the Federal question which he attempts to raise is so unfounded in substance that we are justified in saying that it does not really exist; that there is no fair color for claiming that his rights under the Federal Constitution have been violated, either by depriving him of his property without due process of law or by denying him the equal protection of the laws."

As we conclude that the right asserted by petitioner is not one secured by the Fourteenth Amendment and affords no basis for a suit brought under the sections of the Civil Rights Acts relied upon, we find it unnecessary to consider whether the action by the State Board of which petitioner complains is state action within the meaning of the Fourteenth Amendment. The authority of *Barney* v. *City of New York*, *supra*, on which the court below relied, has been so restricted by our later decisions, see *Raymond* v. *Chicago Traction Co.*, 207 U. S. 20, 37, *Home Tel. & Tel. Co.* v. *Los Angeles*, 227 U. S. 278, 294; *Iowa-Des Moines Bank* v. *Bennett*, *supra*, 246-7; cf. *United States* v. *Classic*, 313 U. S. 299, 326, that our determination may be more properly and more certainly rested on petitioner's failure to assert a right of a nature such as the Fourteenth Amendment protects against state action.

The judgment is accordingly affirmed for failure of the complaint to state a cause of action within the jurisdiction of the District Court.

Affirmed.

Mr. Justice RUTLEDGE concurs in the result.

Mr. Justice FRANKFURTER, concurring.

The plaintiff brought this action in a district court to recover damages claimed to have been suffered at the hands of the defendants as members of the State Primary Canvassing Board of Illinois. The theory of ~~their~~ his claim is that the defendants, being in legal effect the State of Illinois, denied to the plaintiff the equal protection of its laws.

The crucial allegations charging such a denial are in the following paragraph of the complaint:

> "11. That notwithstanding the clear and plain mandates of section 454 and section 456, chapter 46, Illinois Revised Statutes, the defendants Edward J. Hughes and Louie E. Lewis, and the decedent Henry Horner, acting as the State Primary Canvassing Board of Illinois, entered into an understanding and agreement and combined, conspired and confederated together to willfully, maliciously and arbitrarily refuse to designate plaintiff as one of the nominees of the Republican Party for the office of Representative in the General Assembly from the Third Senatorial District of Illinois and to issue their Official Proclamation designating plaintiff as one of the said nominees and to file their proper and correct certificate in the office of the Secretary of State of Illinois showing that plaintiff was one of the nominees of the Republican Party for the Office of Representative in the General Assembly from the Third Senatorial District of Illinois."

I should be silent were the Court merely to hold that as a matter of pleading these allegations are not sufficiently explicit to charge as an arbitrary act of discrimination the concerted and purposeful use by the defendants of their official authority over the election machinery of the State so as to withhold from the plaintiff the opportunity to present himself to the voters of that State "as one of the nominees of the Republican Party" for election to the General Assembly of Illinois. I should be silent even though it were avowed that such a constrained reading of the complaint reflected the most exacting attitude against drawing into the federal courts controversies over state elections. Unless I mistake the tenor of the Court's opinion, the decision is broader than mere inadequacy of pleading.

All questions pertaining to the political arrangements of state governments are, no doubt, peculiarly outside the domain of federal authority. The disposition of state offices, the manner in which they should be filled and contests concerning them, are solely for state determination, always provided that the equality of treatment required by the Civil War Amendments is respected. And so I appreciate that there are strong considerations of policy which should make federal courts inhospitable toward litigation involving the enforcement of state election laws. But I do not think that the criteria for establishing a denial of the equal protection of the laws are any different in cases of discrimination in granting

opportunities for presenting oneself as a candidate for office "as one of the nominees of the Republican Party" than those that are relevant when claim is made that a state has discriminated in regulating the pursuit of a private calling. It appears extremely unlikely that the plaintiff could establish his case. The sole question now is whether, assuming he can make good his allegations, he should be denied the opportunity of a trial to do so.

The Constitution does not assure uniformity of decisions or immunity from merely erroneous action, whether by the courts or the executive agencies of a state. See *McGovern* v. *New York*, 229 U. S. 363, 370-1. However, in forbidding a state to "deny to any person within its jurisdiction the equal protection of the laws", the Fourteenth Amendment does not permit a state to deny the equal protection of its laws because such denial is not wholesale. The talk in some of the cases about systematic discrimination is only a way of indicating that in order to give rise to a constitutional grievance a departure from a norm must be rooted in design and not derive merely from error or fallible judgment. Speaking of a situation in which conscious discrimination by a state touches "the plaintiff alone", this Court tersely expressed the governing principle by observing that "we suppose that no one would contend that the plaintiff was given the equal protection of the laws." *McFarland* v. *American Sugar Co.*, 241 U. S. 79, 86, 87. And if the highest court of a state should candidly deny to one litigant a rule of law which it concededly would apply to all other litigants in similar situations, could it escape condemnation as an unjust discrimination and therefore a denial of the equal protection of the laws? See *Backus* v. *Fort Street Union Depot Co.*, 169 U. S. 557, 571.

But to constitute such unjust discrimination the action must be that of the state. Since the state, for present purposes, can only act through functionaries, the question naturally arises what functionaries, acting under what circumstances, are to be deemed the state for purposes of bringing suit in the federal courts on the basis of illegal state action. The problem is beset with inherent difficulties and not unnaturally has had a fluctuating history in the decisions of the Court. Compare *Barney* v. *City of New York*, 193 U. S. 430, with *Raymond* v. *Chicago Traction Co.*, 207 U. S. 20, *Memphis* v. *Cumberland Telephone Co.*, 218 U. S. 624, with *Home Tel. &*

Tel. Co. v. *Los Angeles*, 227 U. S. 278. It is not to be resolved by abstract considerations such as the fact that every official who purports to wield power conferred by a state is *pro tanto* the state. Otherwise every illegal discrimination by a policeman on the beat would be state action for purpose of suit in a federal court.

Our question is not whether a remedy is available for such an illegality, but whether it is available in the first instance in a federal court. Such a problem of federal judicial control must be placed in the historic context of the relationship of the federal courts to the states, with due regard for the natural sensitiveness of the states and for the appropriate responsibility of state courts to correct the action of lower state courts and state officials. Take the present case. The plaintiff complains that he has been denied the equal protection of the laws of Illinois precisely because the defendants, constituting the State Canvassing Board, have willfully, with set purpose to withdraw from him the privileges afforded by Illinois, disobeyed those laws. To adapt the language of an earlier opinion, I am unable to grasp the principle on which the State can here be said to deny the plaintiff the equal protection of the laws of the State when the foundation of his claim is that the Board had disobeyed the authentic command of the State. Holmes, J. dissenting, in *Raymond* v. *Chicago Traction Co.*, *supra* at p. 41.

I am clear, therefore, that the action of the Canvassing Board taken, as the plaintiff himself acknowledges, in defiance of the duty of that Board under Illinois law, cannot be deemed the action of the State, certainly not until the highest court of the State confirms such action and thereby makes it the law of the State. I agree, in a word, with the court below that *Barney* v. *City of New York*, 193 U. S. 430, is controlling. Neither the wisdom of its reasoning nor its holding has been impaired by subsequent decisions. A different problem is presented when a case comes here on review from a decision of a state court as the ultimate voice of state law. See for instance *Iowa-Des Moines Bank* v. *Bennett*, 284 U. S. 239. And the case is wholly unlike *Lane* v. *Wilson*, 307 U. S. 268, in which the election officials acted not in defiance of a statute of a state but under its authority.

See, e.g., Ex parte Royall, 117 U.S. 241, 251.

See Isseks, Jurisdiction of the Lower Federal Courts to Enjoin Unauthorized Action of State Officials, 40 Harv. L. Rev. 969.

Mr. Justice DOUGLAS, with whom Mr. Justice MURPHY concurs, dissenting.

My disagreement with the majority of the Court is on a narrow ground. I agree that the equal protection clause of the Fourteenth Amendment should not be distorted to make the federal courts the supervisor of the state elections. That would place the federal judiciary in a position "to supervise and review the political administration of a state government by its own officials and through its own courts" (*Wilson* v. *North Carolina*, 169 U. S. 586, 596)—matters on which each State has the final say. I also agree that a candidate for public office is not denied the equal protection of the law in the constitutional sense merely because he is the victim of unlawful administration of a state election law. I believe, as the opinion of the Court indicates, that a denial of equal protection of the laws requires an invidious, purposeful discrimination. But I depart from the majority when it denies Snowden the opportunity of showing that he was in fact the victim of such discriminatory action. His complaint seems to me to be adequate to raise the issue. He charges a conspiracy to wilfully, maliciously and arbitrarily refuse to designate him as one of the nominees of the Republican party, that such action was an "unequal" administration of the Illinois law and a denial to him of the equal protection of the laws, and that the conspiracy had that purpose. While the complaint could have drawn the issue more sharply, I think it defines it sufficiently to survive the motion to dismiss.

No doubt unconstitutional discriminations against a class, such as those which we have recently condemned in *Lane* v. *Wilson*, 307 U. S. 268, and *Skinner* v. *Oklahoma*, 316 U. S. 535, may be more readily established than a discrimination against an individual *per se*. But though the proof is exacting, the latter may be shown as in *Cochran* v. *Kansas*, 316 U. S. 255, where a prisoner was prevented from perfecting an appeal. The criteria are the same whether one has been denied the opportunity to be a candidate for public office, to enter private business, or to have the protection of the courts. If the law is "applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances" (*Yick Wo* v. *Hopkins*, 118 U. S. 356, 373-374), it is the same as if the invidious discrimination were

incorporated in the law itself. If the action of the Illinois Board in effect were the same as an Illinois law that Snowden could not run for office, it would run afoul of the equal protection clause whether that discrimination were based on the fact that Snowden was a Negro, Catholic, Presbyterian, Free Mason, or had some other characteristic or belief which the authorities did not like. Snowden should be allowed the opportunity to make that showing no matter how thin his chances of success may seem.